



California Public Employees' Retirement System
Office of Governmental Affairs
P.O. Box 942720
Sacramento, CA 94229-2720
TTY: (916) 795-3240
(916) 795-3689 phone • (916) 795-3270 fax
www.calpers.ca.gov

Agenda Item 3a

May 17, 2011

TO: MEMBERS OF HEALTH BENEFITS COMMITTEE

- I. **SUBJECT:** SB 751 (Gaines) – As Introduced
Health Care Provider Contracts: Transparency
- II. **PROGRAM:** Legislation
- III. **RECOMMENDATION:** Support
- IV. **ANALYSIS:**

This bill would prohibit contracts by or on behalf of health plans, licensed hospitals, or any licensed health care facilities, or insurers from containing any provision that restricts the ability of the health plan or insurer to release information to subscribers, enrollees, policyholders or insureds regarding the cost range of medical procedures or quality of care services performed by the hospital or facility.

Background

Over the past several years, both the Legislature and the health care industry have attempted to respond to demands for increased “transparency” concerning information about health care costs, utilization, and outcomes. With more and better data on costs and outcomes, purchasers can make better educated decisions, and the industry can more swiftly identify and resolve problems.

Existing law does not prevent health carriers from furnishing information on the cost of procedures to consumers. However, contractual agreements between health plans and insurers and their contracted providers often prohibit the release of this information, particularly when a large provider has market power. This restriction inhibits the ability of plans to provide information to consumers that could help them better understand the differences in costs between providers.

Partnership for Change

Consistent with a continuing commitment to quality and transparency, the CalPERS Board of Administration (Board) approved the Partnership for Change Initiative in 2005 to promote value in hospital care and help moderate costs. Partnership for Change includes two components: the quality component – the California Hospital Assessment and Reporting Taskforce (CHART) and the cost-

efficiency component – the Hospital Value Initiative (HVI). Partnership for Change is sponsored by CalPERS, the Pacific Business Group on Health (PBGH) and the California Health Care Coalition (CHCC).

CHART is a collaborative effort to publicly report hospital clinical quality and patient experience measures; led for the last six years by the University of California, San Francisco (UCSF), and the California HealthCare Foundation (CHCF). HVI is a cost efficiency program that seeks to improve transparency in the California health care marketplace.

Proposed Changes:

Specifically, SB 751 would add provisions to the Health and Safety Code and Insurance Code that:

- Prohibit contracts by or on behalf of a health care service plan and a licensed hospital or any licensed health care facility from containing any provision that restricts the ability of the health plan to furnish information to subscribers or enrollees regarding the cost range of medical procedures and quality of care services performed by the hospital or facility.
- Prohibit contracts by or on behalf of a health insurer and a licensed hospital or other licensed health care facility from containing any provision that restricts the ability of the health insurer to furnish information to policy holders or insureds concerning the cost range of procedures or the quality of services provided by the hospital or facility.
- Make any contract provision inconsistent with the new law void and unenforceable.

SB 751 does not mandate release of such information to the general public, but only allows access to plan enrollees or subscribers, policyholders and insureds.

Legislative History

- 2010 AB 2389 (Gaines) – Similar in intent to SB 751 to prohibit nondisclosure clauses, but would have also provided a review and appeals process for quality of care data. It also would have specified that disclosed data must be risk-adjusted and meet certain requirements, such as recognized evidence- or consensus-based clinical recommendations or guidelines. The Assembly failed to concur in Senate amendments.
CalPERS Position: None.

- 2009 SB 196 (Corbett) – Would have prohibited a contract between a health care provider and a health plan from containing a provision that restricts the ability of the health plan to furnish information on the cost of procedures or quality of care to plan enrollees. The bill was amended to address a different subject. *CalPERS Position: Support.*
- 2008 SB 1300 (Corbett) – Would have prohibited a contract between a health care provider and carriers from containing a provision that restricts the ability of the health carrier to disclose information on the cost of procedures or health care quality information to health carrier enrollees. The Senate failed to concur in Assembly amendments. *CalPERS Position: Support, if Amended.*
- 2005 Chapter 532 (AB 1045, Frommer) – Requires each hospital to submit to the Office of Statewide Health Planning and Development (OSHPD) its average charges for 25 common outpatient procedures and requires OSHPD to post the information on its website. *CalPERS Position: Support.*
- 2003 Chapter 582 (AB 1627, Frommer) – Requires hospitals to make available to the public their list of procedures pricing (charge masters) and to file them with OSHPD; compile and make available lists of charges for commonly performed procedures; and authorizes OSHPD to compile a list of the ten most common Medicare "diagnosis related groups" (DRGs), which is a system to group similar hospital cases, and their average charges. *CalPERS Position: Support, if Amended.*

Issues

1. Arguments in Support

According to the author: "The cost of health care services continues to grow at a rate faster than both general inflation and wages, making health insurance increasingly difficult for individuals to afford and for employers to offer in the workplace. The development and disclosure of health care quality and cost measurements gives consumers the health care information they need to seek out hospitals and other health care providers with a proven track record for high quality care and efficiency."

Organizations in Support: Blue Shield of California; Aetna, Inc.; California Association of Joint Powers Authorities; Association of CA Life & Health Insurance Companies; California Retailers Association; America's Health Insurance Plans; California School Employees Association; California

Association of Health Underwriters; California Association of Health Plans; Service Employees International Union; California Retailers Association; Health Access of California; Western Center on Law and Poverty.

2. Arguments by those in Opposition

Opponents state that hospitals support providing meaningful, accurate and reliable information to consumers. However, without appropriate standards on how that information is provided, insurance companies could potentially provide patients with information that is wrong or misleading. California Hospital Association argues that consumers and hospitals should not be placed in the position of having to trust that the insurance company's rating methodology is accurate and unbiased, and that providers who are being rated should be given an opportunity to review and make corrections to inaccurate data prior to the distribution of ratings.

Organizations in Opposition: California Hospital Association; is oppose unless amended; University of California is oppose unless amended; Catholic Healthcare West is oppose unless amended.

3. Price Transparency

Price transparency makes it possible for consumers to compare health care prices charged by carriers and compare quality information for specific services available to consumers. Ideally, increased health care cost and quality transparency would assist consumers and others who make decisions on their behalf (employers, health carriers, and referring practitioners) with making health care decisions.

According to a February 2008 issue brief published by the CHCF, consumers are paying more attention to the cost of their health care because they have greater responsibility for paying for it. According to the brief, the percentage of single workers with a PPO deductible of \$500-\$999 increased from nine percent in 2000 to 21 percent in 2007.

The Anthem Blue Cross Knee-Hip replacement program is an example of how price transparency raises the awareness of consumers of variations in cost.

4. Quality of Care Transparency

Despite spending more on health care per capita than any other industrialized country in the world, Americans have only a 50 percent chance of receiving

appropriate evidence-based care, according to a study by the RAND Corporation.

According to testimony provided by CHCF in a past informational hearing on health care transparency held by the Assembly Health Committee, quality transparency is important for several audiences. For hospitals and other providers, displaying reliable quality data for individual providers and showing how these results compare with state and national providers; helps focus their quality improvement efforts and gauge their own success. For health plans and other health care purchasers, quality information helps inform decisions about which providers to contract with and helps to determine whether costs are justified.

5. Legislative Policy Standards

The Board's Legislative Policy Standards do not specifically address the issues in this bill. The Board's 2009-10 Health Policy Priorities for State Legislation, however, suggest a support position on proposals that will create greater transparency in, and disclosure of, the cost of health care goods and services. SB 751 could ensure that consumers have access to better information about health care costs and outcomes; therefore, staff recommends the Board adopt a support position.

V. STRATEGIC PLAN:

This agenda item directly relates to Strategic Goal XI: Promote the ability of members and employers to make informed decisions resulting in improved lifestyle choices and health outcomes.

VI. RESULTS/COSTS:

Program Costs

SB 751 could increase transparency in the health marketplace, empowering consumers to make responsible health care spending decisions, resulting in lower health care costs for members and insurers.

Administrative Costs

There are no anticipated administrative costs.

DANNY BROWN, Chief
Office of Governmental Affairs

PATRICIA K. MACHT
Deputy Executive Officer
External Affairs Branch

KATHLEEN BILLINGSLEY
Assistant Executive Officer
Health Policy and Planning